641

SUPREME COURT OF THE UNITED STATES.

No. ~~355.~~ 216.

LAWRENCE G. GRAHAM AND DONALD D. SCOTT,
APPELLANTS,

vs.

JAMES T. SOUTTER, SURVIVING TRUSTEE, &c.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF WISCONSIN.

GOVERNMENT PRINTING OFFICE.

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1 UNITED STATES OF AMERICA,
District of Wisconsin, ss:

I, A. Scott Sloan, clerk of the circuit court of the United States of America for the district of Wisconsin, do hereby certify that I have compared the writings annexed to this certificate, and they are true copies of their respective originals now on file and remaining of record in my office, and being a full and complete exemplification of the record and proceedings in the case of James T. Soutter, survivor of Green C. Bronson, *vs.* The La Crosse and Milwaukee Railroad Company and others, subsequent to certified copy sent to Supreme Court Oct. 31, 1863.

In testimony whereof, I have hereunto set my hand and duly affixed the seal of the said court, at the city of Milwaukee [SEAL.] in the said district of Wisconsin, this fourth day of January, in the year of our Lord one thousand eight hundred and sixty-four, and of the independence of the United States of America the eighty-eighth.

A. SCOTT SLOAN, *Clerk*,
By JAMES McFARLIN, *Deputy*.

2. Circuit court of the United States of America for the district of Wisconsin.

UNITED STATES OF AMERICA,
District of Wisconsin, ss:

At a stated term of the circuit court of the United States of America for the district of Wisconsin, begun and held according to law at the city of Madison, in said district of Wisconsin, on the second Monday (being the ninth day) of November, A. D. 1863.

Present: The honorable Andrew G. Miller, district judge presiding; D. C. Jackson, marshal; A. Scott Sloan, clerk.

Nov. 10, 1863. Among other things, the following proceedings were had, to wit:

Circuit court of the United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTER, survivor of GREEN C. BRONSON,
vs.
THE LA CROSSE & MILWAUKEE RAILROAD COMPANY and others, def'ts. } In equity.

To the judges of the circuit court of the United States for the 9th circuit and district of Wisconsin:

Your petitioner, the Milwaukee and Minnesota Railroad Company, one of the defendants in the above-entitled cause, respectfully shows

to the court here, that it caused to be served on Hans Crocker, receiver in this cause, on the 14th day of September, A. D. 1863, a written notice and demand, a copy of which is hereto attached and marked Exhibit No. 1, and that it caused to be served on the Milwaukee and St. Paul Railway Company, so called, a notice, a
3 copy of which is hereto attached and marked Exhibit No. 2, by delivering the same to and leaving the same with ——— Rogers, vice-president of said company last named, at the office of said company, in Milwaukee.

Your petitioner further shows, that neither said receiver nor said Milwaukee and St. Paul Railway Company has complied with the demand so served on him, and it respectively, as before stated, and that neither has filed in the office of the clerk of said court any detailed statement as required in said written demand.

Your petitioner further shows to your honors, on information and belief, that the said Milwaukee and St. Paul Railway Company, so called, is a combination of men pretending to be a corporation, but that it was organized in violation of law and in contempt of the injunction of a court of competent jurisdiction over the subject-matter and the parties pretending to organize the same, and that its pretended organization is null, fraudulent and void; that since its entering into possession of the railroad franchises, said property described in and conveyed by the mortgage set out in the bill of complaint in this cause, and to foreclose which said suit is brought, the said Milwaukee and St. Paul Railway Company has misappropriated and converted to its own use a great amount of the earnings and revenue of said property, railroad, and franchises, to wit, to an amount of more than fifty thousand dollars, in violation of the order under which said company was permitted to receive the same, and that said company in managing said road in all respects to the detriment of those interested therein, said company being a rival and unfriendly corporation to your petitioner, which is entitled to said road, franchises, and property.

Your petitioner further shows, on information and belief,
4 that said Milwaukee and St. Paul Railway Company intend to, and will, within the next six months, misappropriate and convert to their own use all but a very small part of the earnings of said road, property, and franchises, and that the present bond, which it has given in the penal sum of only one hundred thousand dollars, will be entirely inadequate and insufficient security to your petitioner in the premises.

That the receiver's return of net receipts for May to November, 1862, were as follows:

May	$34,379 71
June	59,489 49
July	43,497 94
August	19,057 16
September	70,438 33
October	123,881 16

That said Milwaukee & St. Paul railway pretend that in the present year, and while the same has been in their possession of same property and franchises, the net earnings are as follows, viz.:

In June, from 15th to 30th	$3,334 28
July	12,761 95
August	685 55

All of which matters and things your petitioner is willing to prove as this court shall direct. Wherefore your petitioner prays—

1. That the said Milwaukee & St. Paul Railway Company may be, by order of this court, compelled to render to this court immediately a detailed statement, showing, in detail and item by item, all the receipts and disbursements had and made by it in the management of said road, franchises, and property, from the time it received the same to the date of said statement; and that any person or party interested therein may, within twenty days thereafter, file exceptions to the same; and that in case such exceptions shall be filed the same shall be referred to a master to take proof and report thereon.

2. That said receiver may be required to present to said court a detailed statement, item by item, of all the receipts and disbursements by him had or made since his appointment as receiver and up to the date of presenting such statement; and that any party or person interested may file exceptions thereto within twenty days after the same is filed; and in case of exceptions being filed thereto, that the same be referred to a master to take proofs and report thereon.

3. That the Milwaukee & St. Paul Railway Company be required to give additional security, in the further sum of three hundred thousand dollars, or such other sum as the court may direct, conditioned to perform faithfully the order of said court under which it holds said railroad, property, and franchises. And that your petitioner may have leave to commence an action at law on the bond given by said Milwaukee & St. Paul Railway Company and surities for breach of its condition, to your petitioner's damage. And that your petitioner may have such other and further relief in the premises as may agreeable to equity and good conscience.

THE MILWAUKEE & MINNESOTA
RAILROAD COMPANY,
By MAT. H. CARPENTER, *Sol.*

DISTRICT OF WISCONSIN, *ss:*

Moses Kneeland, being first duly sworn, on oath says, that he is the president of the Milwaukee & Minnesota Railroad Company; that he has heard read and knows the contents of the foregoing petition, and that the same is true to his own knowledge, except matters stated on information and belief, and that as to those matters he believes it to be true.

MOSES KNEELAND,
President of the M. & M. R. R. Co.

Subscribed and sworn to before me, this 9th day of November, A. D. 1863.

[Stamp.]

J. M. MILLER,
Clerk U. S. D. C., Wis.

6 *Exhibit No.* 1.

MILWAUKEE, *Sept.* 14, 1863.

To HANS CROCKER, Esq.,
Receiver, &c.

The Milwaukee & Minnesota Railroad Company hereby respectfully demands a statement, in detail, of the receipts and disbursements received and made by you, or by the Milwaukee & St. Paul Railway Company, in the operation of the eastern division of the so-called La Cross & Milwaukee Railroad since said Milwaukee & St. Paul Railway Company has had possession of the same, and of the rolling stock thereto pertaining and belonging to the said Milwaukee & Minnesota Railroad Company.

THE MILWAUKEE & MINNESOTA
RAILROAD COMPANY,
By MOSES KNEELAND, *President.*
MAT. H. CARPENTER, *Attorney.*

Exhibit No. 2.

MILWAUKEE, *Sept.* 14, 1863.

To the Milwaukee & St. Paul Railway Company:

The Milwaukee and Minnesota Railroad Company hereby respectfully demands a statement, in detail, of the receipts and disbursements received and made by you, in the operation of the eastern division of the so-called La Crosse & Milwaukee Railroad since your company has had possession of the same, and of the rolling stock thereto pertaining and belonging to the said Milwaukee and Minnesota Railroad Company.

THE MILWAUKEE & MINNESOTA
RAILROAD COMPANY,
By MOSES KNEELAND, *President.*
MAT. H. CARPENTER, *Attorney.*

7 November 10th, 1863. This day came the Milwaukee & Minnesota Railroad Company, one of the defendants, by its counsel, Mat. H. Carpenter, and filed its petition that the Milwaukee and St. Paul Railway Company may, by order of this court, be compelled to render a detailed statement of all its receipts and disbursements in its management of the said road, &c., as per said petition herein filed.

And afterwards, on the 2d day of January, 1864, the affidavit, bond, and citation attached together, were received and filed, and which are in the words and figures following, to wit:

Circuit court of the United States for the 9th circuit and district of Wisconsin.

JAMES T. SOUTTER, survivor of GREEN C. BRONSON, trustee, *vs.* THE LACROSSE & MILWAUKEE RAILROAD COMPANY and others, defendants. } In equity.

To the honorable Andrew G. Miller, judge of the district court of the United States for the district of Wisconsin:

Your petitioners, Lawrence G. Graham and Donald D. Scott, humbly petitioning, respectfully represent that in the above-entitled cause in the district court of the United States for the district of Wisconsin, James T. Soutter and Green C. Bronson exhibited their bill on the equity side of said court, on the 9th day of December, A. D. 1859, against the La Crosse and Milwaukee Railroad Company, your petitioners, and others, to foreclose a certain mortgage given by
8 said last-named company to said *mortgage given by said last-named company to said* complainants, conveying to said complainants the said company's railroad from Milwaukee to Portage, together with the rolling stock and franchises of said company thereto belonging, of the value of over two million dollars, to secure bonds of said company to the amount of one million dollars, therein particularly described; that subpœna was duly issued thereon according to the course and practice of said court, and duly served on your petitioners. And afterwards, to wit, on the 27th day of March, 1860, your petitioners filed their answer to said bill of complaint claiming an interest in said mortgaged premises as incumbrances by judgment, amounting to over twenty thousand dollars, and defending against the whole pretended claim and equity of said complainants, as set forth in said bill of complaint; and that the said complainants afterwards, to wit, on the 7th day of May, A. D. 1860, filed general replication to your petitioners' answer; that proofs were afterwards taken in said cause by the parties thereto, and by your petitioners; and such proceedings were afterwards had in said cause, that, on the 13th day of January, A. D. 1862, the said district court made and rendered a final decree in said cause, ordering the mortgaged property, to be sold and foreclosing your petitioners in said cause of and from any right or equity of redemption in and to said mortgaged premises; that a certain contract was made and entered into by and between the said complainants and the Milwaukee & Minnesota Railroad Company, on the 26th day of September, A. D. 1862; after which, for the purpose of obtaining the stipulation of your petitioners to the rendition of a decree according to said contract, the Milwaukee and Minnesota Railroad Company promised
9 your petitioners to pay them their said judgment after the said company should enter into possession of said railroad mentioned in said contract; and relying upon the performance of said con-

tract, your petitioners have omitted to take their appeal from said decree by which they are aggrieved.

Your petitioners are now advised by counsel, and believe, that said contract has become impossible to be performed without the fault of either party thereto, and that all the parties to said contract and the stipulation entered into as a part of said contract, are restored to the same position and rights which they had before said contract and stipulation were made, and your petitioners feel themselves aggrieved by said final decree, and desire to appeal therefrom.

Your petitioners, therefore, humbly pray your honor to allow them an appeal from said final decree in said cause to the Supreme Court of the United States.

Your petitioners further represent that the said complainants, on the 17th day of January, A. D. 1862, took an appeal from said final decree to the Supreme Court, and that said appeal is cause No. 132 of the calendar of the Supreme Court, December term, 1863; and your petitioners show that they fear that unless the citation upon their said appeal shall be made returnable to some day in the present term of said Supreme Court, the said cause No. 132 may be reached and heard by said Supreme Court at the present time, and your petitioners thus be deprived of the benefit of their said appeal.

LAWRENCE G. GRAHAM.

10 DISTRICT OF WISCONSIN, *ss:*

Lawrence G. Graham, being first duly sworn, says he is one of the petitioners above named; that he has heard the foregoing petition read and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters stated therein on information and belief, and that as to those matters he believes it to be true.

LAWRENCE G. GRAHAM.

Subscribed and sworn to before me this 29th day of December, A. D. 1863.

A. SCOTT SLOAN, *Clerk*,
By JAMES McFARLIN, *Dep'ty.*

This petition is endorsed: "Appeal of Graham & Scott. Mat. H. Carpenter for appellants."

Bond.

Know all men, by these presents, that we, Lawrence G. Graham as principal, and Josiah A. Noonan and Charles H. Wheeler as sureties, are held and firmly bound unto James T. Soutter, survivor of Green C. Bronson, deceased, trustee, in the just and full sum of five hundred dollars, to be paid to the said Soutter, or his certain attorney, executors, administrators, or assignees, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administra-

tors, jointly and severally, by these presents. Sealed with our seals and dated this 28th day of December, A. D. 1863.

Whereas, lately, at a term of the district court of the United States for the district of Wisconsin, in a suit depending in said court in equity between the said Green C. Bronson and James T. Soutter, trustees, complainants, and the La Crosse and Milwaukee Railroad Company, Lawrence G. Graham, Donald D. Scott, and others, defendants, a decree was rendered, on the 13th day of January, 1862, by said district court against the said Graham and Scott, and the said Graham and Scott having
11 prayed and obtained an appeal from said decree to the Supreme Court of the United States, and filed a copy thereof in the office of the clerk of the circuit court of the United States for the district of Wisconsin, to reverse the said decree in the aforesaid suit, and a citation directed to the said James T. Soutter, survivor of said Green C. Bronson, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington the —— Monday of ———, A. D. 1864:

Now, the condition of the above obligation is such, that if the said Graham and Scott shall prosecute said appeal to effect, and answer all damages and costs if said Graham and Scott fail to make said appeal good, then the above obligation to be void; else to remain in full force and virtue. We, and each of us, authorize any person interested, or the clerk of the Supreme Court of the United States, the clerk of said district court, or the clerk of the circuit court of the United States, at any time hereafter, to fill the above blanks as to the return day of said citation above mentioned.

Witness our hands and seals this 28th day of December, A. D. 1863.

LAWRENCE G. GRAHAM. [SEAL.]
J. A. NOONAN. [SEAL.]
CHA'S H. WHEELER. [SEAL.]

In presence of—
WILLIAM J. C. FORSTER.

DISTRICT OF WISCONSIN,
State of Wisconsin, Milwaukee County, ss:

Josiah A. Noonan, being first duly sworn, says, that he is the person who executed the above bond, and that he is worth
12 one thousand dollars over and above all debts, liabilities, and exemptions of property from sale on execution.

J. A. NOONAN.

Subscribed and sworn to before me this 28th day of December, A. D. 1863.

[5 ct. stamp.]

WILLIAM J. C. FORSTER,
Notary Public, Mil. Co., Wis.

DISTRICT OF WISCONSIN,
State of Wisconsin, Milwaukee County, ss:

Charles H. Wheeler, being first duly sworn, says, that he is the person who executed the above bond, and that he is worth one thou-

sand dollars over and above all debts, liabilities, and exemptions of property from sale on executions.

CHA'S H. WHEELER.

Subscribed and sworn to before me this 28th day of December, A. D. 1863.

[5 ct. stamp.]

WILLIAM J. C. FORSTER,
Notary Public, Mil. Co., Wis.

J'y 2, 1864. Bond and appeal allowed.

A. G. MILLER,
District Judge.

The United States of America to James T. Soutter, survivor of Green C. Bronson, trustee, greeting :

You are hereby cited and admonished to be and appear at a Supreme Court, of the United States, to be holden at Washington on the first Monday of February next, pursuant to an appeal filed in the clerk's office of the circuit court for the 9th circuit and district of Wisconsin, wherein Lawrence G. Graham and Donald D.
13 Scott are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against said appellants on the 13th day of January, A. D. 1862, as in the said appeal mentioned, should not *not* be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the United States, this second day of January, A. D. 1864.

A. G. MILLER,
District Judge.

And the affidavit, bond, and citation being attached together, there appeared thereon the following acknowledgment of service:

Copy of the foregoing citation and papers attached served on me this 2d day of Jan'y, 1864.

THOMAS L. OGDEN,
Sol. for Comp'ts.

Filed 26th January, 1864.